

Attorney Docket No.: J3711(C)
Serial No.: 10/775,510
Filed: February 10, 2004
Confirmation No.: 1049

REMARKS

Claim 1 has been amended to correct a typographical error ("dimmer" corrected to its proper spelling --dimer--) and to provide punctuation that improves claim readability. Claim 1 has been further amended to specify that at least 30% by weight of the carrier fluid or mixture of fluids is the aryl substituted siloxane, as well as to specify that the anhydrous antiperspirant composition is in the form of a cream, soft solid or stick composition. See, for example, page 13, lines 7 to 10; and page 20, lines 9 to 20. Claim 12 has been amended to clarify that at least 50% by weight of the carrier fluid or mixture of fluids is the aryl substituted siloxane; it is respectfully submitted that such amendment moots the 35 U.S.C. §112 rejection applied thereto. Similarly, withdrawn claim 12 has been amended to clarify that from 60 to 90% by weight of the mixture of carrier fluid is the aryl substituted siloxane. See, for example, page 13, lines 1 to 14. Claim 24 has been amended to specify that the composition is in the form of a stick that has a hardness of greater than 0.5N/mm² (see, for example, page 20, lines 15 to 20). Entry of the amended claims is respectfully requested.

Claims 1, 6-8, 12, 16, 18-20 and 22-24 stand rejected under 35 U.S.C. §103(a) over McGlone et al. (US 6,503,492) in view of Chauh et al. (US2004/0213748 and WO03/005977). Claim 4 stands rejected under 35 U.S.C. §103(a) over McGlone et al. and Chuah et al. combined and in view of Nye et al. (WO00/27248). Additionally, claims 1, 6-8, 12, 16, 18-20 and 22-23 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claims 1-43 and 48-51 of co-pending US 11/316,596 (co-pending '596). These rejections are respectfully traversed.

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The pending claims depend directly or indirectly from claim 1, which claim is directed to an antiperspirant composition that, in addition to the other specified components, contains from 30 to 95% by weight of a water-immiscible carrier fluid that, turn, contains at least 30% by weight of an aryl substituted siloxane (the formula 1 siloxane) that is highly substituted with diphenylethyl groups. In the structural formula for the formula 1 siloxane (i.e., $R^1R^A_2Si-O-[SiR^2R^A-O]_n-SiR^3R^A_2$) the groups R^1 , R^2 and R^3 **are either R^C or R^4 with R^4 being diphenylethyl.** This description, coupled with the claim 1 requirement that **no more than 20% of the total occurrences of R^1 , R^2 and R^3 are R^C ,** is another way of saying that **80% or more of the total occurrences of R^1 , R^2 and R^3 are diphenylethyl.** Pursuant to the subject invention it was found that these diphenylethyl-substituted siloxanes can be used to provide structured antiperspirant compositions that offer significant processing advantages such as, for example, comparatively low solidification temperatures and a relatively wide processing temperature window. It is respectfully submitted that none of McGlone et al., Chauh et al., or Nye et al. disclose the diphenylethyl substituted siloxanes described by the subject claims.

The Office Action refers to paragraph [0035] of Chauh et al. as teaching "linear silicone oils which contain a high proportion of phenyl substituents". In its entirety, paragraph 0035 discloses the following:

The silicone oils which can be contemplated for incorporation herein can be either volatile or non-volatile oils. Volatile oils can comprise either linear or cyclomethicones containing from 4 to 6 silicon units. Suitable examples include DC245 and DC345, both of which are available from Dow corning Inc. Non – volatile oils can comprise dimethicones or linear silicone oils which contain a high proportion of phenyl substituents. Suitable examples of non-volatile silicone oils include members of the DC200 series and DC704. **However, it is preferable for the proportion of silicone oils in the carrier fluid mixture to be not more than 10%, particularly not more than 5% and most desirably be absent.** (Emphasis added.)

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At pages 15 to 16 the subject application discusses the non-volatile silicone oils that may be employed in conjunction with the diphenylethyl-substituted silicone oils of the subject compositions. The oils discussed therein include the DC200TM series of oils, as well as DC704TM, the very materials mentioned in Chauh et al, with DC704TM, being further identified by the subject application as being among the methylphenylsiloxanes in which there is from 0.5 to 1.2 phenyl groups per methyl group. DC704TM is not the highly diphenylethyl-substituted silicone oil of the subject claims. It is respectfully submitted that there is nothing in Chauh et al. (or in McGlone et al. or in Nye et al.) that discloses the subject diphenylethyl-substituted siloxanes. Moreover, Chauh et al., teaches lower levels of silicone oil than that required by the amended claims.

The subject application includes comparative examples in which DC704TM (identified in the examples as CS1) is present as a carrier fluid. Table 3 provides gelling temperature data for antiperspirant compositions in which the carrier was 100% w/w DC704TM (CS1) or a combination of 75% w/w DC704TM and 25% w/w isotearyl alcohol and the gelling agent was an aspartame ester gellant (G2) at a level of 1.5% w/w or N-lauryol-L-glutamic acid di-n-butylamide (G3) at a level of 5% w/w. These comparative examples are contrasted with otherwise identical antiperspirant compositions in which the aryl substituted siloxane (NS0124, NS053, NS078, NS065, and NS068) had, as its combination of R⁴ and R^C substituents, 85% or 100% of diphenylethyl groups and 15% or 0% of R^C groups (identified as alpha-methylstyrene dimer, allyloxyethanol or benzyl alcohol groups). The compositions in which the gelling agent was G2 and the carrier fluid was 100% CS1 had a **Tg of 98°C**, whereas, the compositions in which the gelling agent was G2 and the carrier fluid was 100% of a diphenyl ethyl substituted siloxane as described by the subject claims (NS124 or NS065) had **Tg values of 33°C and 55°C respectively**. In the mixed carrier fluid examples with the G2 gellant, the composition that contained CS1 had a **Tg of 58°C**,

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and the compositions that contained the diphenylethyl substituted siloxanes (NS0124, NS053, NS078, NS065, or NS068) had **Tg values ranging from 25 to 36°C**. In the mixed carrier fluid examples with the G3 gellant, the composition that contained CS1 had a **Tg of 52°C** and the compositions that contained the diphenylethyl substituted siloxane NS053 (the only diphenylethyl substituted siloxane reported for a system with a G3 gellant) had a **Tg value of 37°C**. Comparing compositions containing like amounts of co-carrier (if present) and gellant, the Table 3 data demonstrates that replacing the DC704TM carrier fluid by subject diphenylethyl substituted siloxanes resulted in compositions with significantly lower gelling temperatures.

Table 4 includes a comparison of the pour temperatures of stick compositions made with DC704TM (CS1) or the diphenylethyl-substituted siloxanes identified as NS053, NS065 or NS068. With pour temperatures ranging from **65-67°C**, the compositions containing one of the subject diphenylethyl-substituted siloxanes offered significant processing advantages over the DC704TM –containing composition (pour temperature **85°C**).

The processing temperature advantages offered by the subject diphenyl substituted siloxanes in structured antiperspirant compositions as described by the subject claims is significant, surprising and unexpected.

It is respectfully submitted that in addition to their **not disclosing the subject diphenylethyl-substituted siloxanes**, there is nothing in any of Chuah et al., McGlone et al. or Nye et al. that discloses or suggests the processing advantages of the subject diphenylethyl-substituted siloxanes as carrier fluids in the structured stick, cream or soft solid compositions as described by the amended claims.

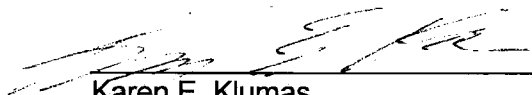
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With respect to the obviousness-type double patenting rejection, Applicants refer to the Amendment filed on or about January 7, 2007 in later filed co-pending '596 for the current version of the '596 claims. The amended claims of co-pending '596 require a segregation inhibitor that is an alkylene-arylene block copolymer in a ratio to fibre-forming amide gellant of from 1:1 to 3:1. As noted in such amendment, the combination of segregation inhibitor and fibre-forming gellant set forth in the '596 claims minimizes the issues of antiperspirant particle segregation that can occur during production when a fibre-forming amide gellant is employed. There is nothing in the subject claims that discloses or suggests compositions the use of segregation inhibitor as described by the '596 claims, nor is there any disclosure of the ratio of segregation-inhibitor to fibre-forming gellant required by the '596 claims. It is respectfully submitted that the '596 claims patentably distinguish over the claims of the subject invention, and removal of the obviousness-type double patenting rejection is respectfully requested.

In light of the above amendments and remarks, reconsideration and allowance of the subject claims is respectfully requested.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,



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